

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
ALLIED STORES, INC.)
d.b.a. THE BON MARCHE)
DISTRIBUTION CENTER,)
Appellant,)
vs.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHB No. 595

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER being an appeal of Allied Stores, Inc., d.b.a. The Bon Marche Distribution Center, to a notice of civil penalty of \$100.00 for an alleged smoke emission violation; having come on regularly for hearing before the Pollution Control Hearings Board on the 23rd day of July, 1974, at Seattle, Washington; and appellant, Allied Stores, Inc. d.b.a. The Bon Marche Distribution Center, appearing through its general manager, William Hicks and respondent, Puget Sound Air Pollution Control Agency, appearing through its attorney, Keith D. McGoffin; and Board

1 member present at the hearing being W. A. Gissberg; and the Board
2 having reviewed the transcript of the testimony, exhibits, records and
3 files herein and having entered on the 13th day of August, 1974, its
4 proposed Findings of Fact, Conclusions of Law and Order, and the Board
5 having served said proposed Findings, Conclusions and Order upon all
6 parties herein by certified mail, return receipt requested and twenty
7 days having elapsed from said service; and

8 The Board having received no exceptions to said proposed Findings,
9 Conclusions and Order; and the Board being fully advised in the premises;
10 now therefore,

11 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
12 Findings of Fact, Conclusions of Law and Order, dated the 13th day of
13 August, 1974, and incorporated by this reference herein and attached
14 hereto as Exhibit A, are adopted and hereby entered as the Board's
15 Final Findings of Fact, Conclusions of Law and Order herein.

16 DONE at Lacey, Washington, this 16th day of September, 1974.

17 POLLUTION CONTROL HEARINGS BOARD

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19 Walt Woodward
20 WALT WOODWARD, Chairman

21 W. A. Gissberg
22 W. A. GISSBERG, Member

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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
ALLIED STORES, INC.
d.b.a. THE BON MARCHE
DISTRIBUTION CENTER,

Appellant,

v.

PUGET SOUND AIR
POLLUTION CONTROL AGENCY,

Respondent.

PCHB No. 595

FINDINGS OF FACT,
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A formal hearing on the appeal of Allied Stores, Inc., d.b.a. The Bon Marche Distribution Center, to a notice of civil penalty of \$100.00 for an alleged smoke emission violation came on before Board member W. A. Gissberg on July 23, 1974 in Seattle, Washington.

Appellant appeared by and through its general manager, William Hicks; respondent appeared by and through its attorney, Keith D. McGoffin.

Having reviewed the transcript of the testimony and the exhibits and being fully advised, the Board makes the following

EXHIBIT A

FINDINGS OF FACT

I.

At 3:20 p.m. on April 29, 1974, respondent's inspector observed a smoke emission from an incinerator stack of a warehouse occupied and under the control of appellant at South Center, King County, Washington. The smoke was emitted therefrom for seven minutes of a ten minute period and was of a shade darker than No. 2 on the Ringelmann Chart, namely, varying from a Ringelmann No. 3 to 3-1/4.

II.

Appellant's incinerator was undergoing repairs and modifications at the time of the violation. The work was being performed by a specialty contractor, David Evans Company. Mr. Evans knew about the availability of respondent's Section 9.16 of its Regulation I, which, under certain circumstances, excuses what would otherwise be a violation of respondent's smoke emission regulations when the emissions are "a direct result of start-ups, periodic shutdown, or unavoidable and unforeseeable failure or breakdown . . .". Section 9.16 is not available to excuse a violation unless certain requirements stated therein are met, i.e.,

" . . . (1) The owner or operator of such process or equipment shall immediately notify the Agency of such occurrence together with the pertinent facts relating thereto regarding nature of problem as well as time, date, duration and anticipated influence on emissions from the source."

Mr. Evans, on behalf of appellant, did notify respondent of the upset condition of appellant's incinerator on April 16, 1974 and in that report estimated that the emission would be corrected by 1:00 p.m. on April 17, 1974. Mr. Evans also made an upset condition report to respondent on April 23, 1974 and April 25, 1974 to the effect that repairs

FINDINGS OF FACT,

CONCLUSIONS OF LAW AND ORDER

were being made on the incinerator. Respondent has no record of receiving such communication on appellant's behalf and apparently did not fill out its usual condition report form utilized by it under such circumstances. Mr. Evans, in his testimony, admitted that he probably should have given to the respondent more specific information concerning the time and duration of the anticipated influence on emissions from the repairs to the incinerator. On April 29, 1974, the incinerator was again malfunctioning and although it once again required the attention and services of the David Evans Company, no upset condition report was communicated to respondent.

III.

As a result of the emission incident of April 29, 1974, respondent caused this notice of violation to be served upon appellant and subsequently issued its Notice of Civil Penalty No. 1569, in the sum of \$100.00, which is the subject of this appeal.

IV.

Section 9.03(a)(1) of respondent's Regulation I makes it unlawful to cause or allow the emission of an air contaminant darker in shade than No. 2 on the Ringelmann Chart for more than three minutes in any one hour.

V.

Prior to April 29, 1974, respondent had issued two other of its notices of violation to appellant for which no civil penalties were imposed. On one of the prior occasions, appellant also contended, as it does in the instant appeal, that the source of the smoke could have been from "styrofoam packing material buried beneath discarded paper in a carton of debris." On that prior occasion, appellant assured respondent

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 by letter that "Immediate steps will be taken to insure that all
2 materials which are amenable to pollution production are separated from
3 the other burnable materials."

4 VI.

5 Any Conclusion of Law hereinafter deemed to be a Finding of Fact
6 herewith is adopted as same.

7 From these Findings, the Pollution Control Hearings Board comes
8 to these

9 CONCLUSIONS OF LAW

10 I.

11 Appellant was in violation of Section 9.03(a)(1) of respondent's
12 Regulation I.

13 II.

14 Appellant contends the amount of the civil penalty imposed is unjust
15 in view of the earnest efforts by it to reduce or eliminate pollution.
16 While appellant's efforts in that regard are commendable, violations of
17 respondent's air pollution control regulations cannot be condoned,
18 particularly where, as here, appellant has had prior notices of violation
19 served upon it without the imposition of civil penalties. Section 9.16
20 of respondent's Regulation I does provide a means by which appellant can
21 accomplish repairs to its malfunctioning incinerator without incurring
22 civil penalties. However, that section must be followed explicitly in
23 order to take advantage of its provisions. Such was not the case here.

24 III.

25 Any Finding of Fact herein which is deemed to be a Conclusion of
26 Law herewith is adopted as same.

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 Therefore, the Pollution Control Hearings Board makes this

2 ORDER

3 The civil penalty is affirmed.

4 DONE at Lacey, Washington this 13th day of August, 1974.

5 POLLUTION CONTROL HEARINGS BOARD

6 Walt Woodward
7 WALT WOODWARD, Chairman

8 W. A. Gissberg
9 W. A. GISSBERG, Member

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11 CHRIS SMITH, Member
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27 FINDINGS OF FACT,
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